



Council's Order of January 25, 2007.<sup>1</sup> Accordingly, the Magistrate Judge recommended that the instant action be remanded to the Commissioner with instructions to afford the plaintiff an opportunity to present evidence consistent with the Appeals Council's Order of January 25, 2007;

(4) The defendant indicated that no objections would be filed to the Magistrate Judge's Report and Recommendation;

**AND, IT FURTHER APPEARING THAT:**

(5) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(6) Having examined the Magistrate Judge's Report and Recommendation, we agree with the Magistrate Judge's conclusions regarding the disposition of this action;

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

(1) The Report and Recommendation of Magistrate Judge J. Andrew Smyser filed July 15, 2008 (Document 12) is **ADOPTED**.

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<sup>1</sup>We note that a Notice of Appeals Council Action was filed on January 25, 2007 and an Order of Appeals Council Remanding Case to the ALJ was filed on March 19, 2007. (See R. 79-88).

(2) The above-captioned action is **REMANDED** to the Commissioner to afford plaintiff the opportunity to present evidence consistent with the Appeal Council's Order of January 25, 2007, as set forth in the Magistrate Judge's Report and Recommendation of July 15, 2008; and

(3) The Clerk of Court is directed to forward a copy of this Memorandum and Order to the Magistrate Judge.

***s/Edwin M. Kosik***  
United States District Judge